ON THE LEGALITY OF A BOYCOTT IN GERMANY

A decision of the German Imperial Court rendered July 12, 1906, recognizing the legality of a boycott, may be of interest to American readers. The following abtract is translated from the *Deutsche Juristenzeitung*, September 15, 1906. A decision of the German Imperial Court, it should be noted, has not the same absolute authority as that of one of our highest courts, since the court is divided into a number of senates, the rulings of which do not always agree.

The following are the facts of the case:

In March, 1904, the organized bakery employees in K. demanded that the masters should no longer furnish them food or lodging, but in lieu thereof should pay them the sum of M.12 per week; they also demanded a certain minimum wage. Since numerous employers did not grant the demand, the men went on strike. The leader of the strike, N., undertook to explain the justice of the strikers' demand by pamphlets and matter published in the social democratic paper of the town, and requested the people of K. and its environs to procure their supplies of bread only from bakeries that had granted the demands of the employees. A list of these was published. At the same time the labor federation of K., a union of trade associations of workmen existing in K. and vicinity, in order to aid the cause of the bakers' employees, formally resolved to boycott the recalcitrant employers, and published this in the paper before mentioned in form of a manifesto addressed to the "organized labor" of K. and vicinity, coupled with the threat that organized laborers who should buy of the boycotted concerns or from their patrons, would be called to account. Even after the termination of the strike this boycott was continued.

Plaintiffs (chief of a master-bakers' guild, and the owner of a bakery named S.) brought action to restrain future public declarations of boycott, and for compensation for the injury already suffered. They based their action on *Trade Code*, § 153 ("coercing to join a combination") and *Civil Code* §§ 823, 826 (very general provisions, against unlawful injury).

S. alleged especially that he employed non-union laborers, who had not joined the strike nor made the demands in question; notwithstanding this his bakery had been boycotted as "irregular."

The court below had dismissed the complaint. The Supreme

Court, on writ of error, upholds the decision. The decision of the court is as follows:

It is true the Imperial Court has held repeatedly that a going concern is property, the injuring of which may give rise to an action for damages. But not every act of another that causes damage is an unlawful injury, especially not an act which is merely an exercise of general and of economic liberty. Among lawful acts must be counted the formation of labor unions for the purpose of obtaining better conditions of work and of payment, and measures taken by such unions and their friends and adherents for this purpose are not illegal merely because they injure existing concerns. The only question, therefore, is whether the measure taken in the present case goes beyond what is lawful in the wage and labor struggle. The boycotting of tradespeople by labor unions is not unlawful *per se*. Boycott and strike alike are weapons, the former seeking to curtail the sale of goods, the latter seeking to hinder their production. One is neither more or less permissible than the other. Both find their counterparts in the weapons used by employers: the strike in the lockout, the boycott in the blacklist. The law prohibits the use of menace and coercion for the purpose of procuring and retaining adherents in the wage conflict, and it also protects the adversary against undue measures taken to force him to grant new terms of employment. But by the threat that organized workmen not joining in the boycott would be called to account, it must be assumed that it was only meant that they would be expelled from their union in accordance with its by-laws. Such a threat is not unlawful, since the right to hold out certain coercive measures rests upon a special relation. If the measure threatened is not punishable, the threat is not punishable. Neither in their purposes, nor in the means they used, did the defendants violate the general rules of fair and proper conduct. It does not matter whether their demands were justifiable or not; it is sufficient that they regarded them as just. In their publications, they avoided personal recriminations, and in the main confined themselves to a request for aid by giving preference in dealing to concerns acceding to the workmen's demands. Nor does it offend against the rule of fair conduct to apply for aid to others not immediately concerned in the struggle. In similar manner there have been requests to avoid department stores in order to favor small concerns, or to give preference to Christian tradesmen. Through such means the removal of real or alleged evils is frequently sought. The publication of circulars of this kind cannot be regarded as violating the rules of fair dealing.

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